

## REMARKS

### *Summary of the Office Action*

The Office Action contends that the application contains three distinct concepts that are not so linked as to form a single general inventive concept under PCT Rule 13.1 and sets forth a restriction requirement under 35 U.S.C. § 121 and 372 as follows:

<u>Group</u>	<u>Claims</u>	<u>Invention</u>
I	100-110, 116-135, 141-143	Bait holding apparatus
II	111-115	Method of forming a bait holding apparatus
III	136-140	Applicator for a bait holding apparatus

Furthermore, the Office Action contends that each above-identified group contains claims directed to more than one species and requires the Applicant to elect a single species and identify the claims readable thereon.

### *Election*

Applicant traverses the restriction of Groups I and II and withdraws, without traverse, Group III (claims 136-140) from consideration. More particularly, Applicant provisionally elects, with traverse, the claims of Group I, Species I for examination.

According to point 4 on Page 3 of the Detailed Action, Group I, Species I corresponds with claims 100-105 (Figures 1-5). However, Applicant submits that claim 106 (and its dependent claims 107-110) also has a linking technical relationship with Group I, Species I (Figures 1-5) in addition to Group I, Species VI (Figures 6-7) to which the Office Action contends claim 106 belongs. As shown in EXHIBIT A, which is attached, the shaded areas of FIG. 1 identified as “RINGS” (i.e., the generally annular spaces between two adjacent rings of apertures) correspond to the “plurality of rings in series...” of claim 106. Furthermore, the spaces between adjacent apertures in the same ring of apertures connect adjacent shaded “RINGS” and, thus, correspond to the “one or more connecting members” of claim 106. To this end, it can be appreciated that both claims 100 and 106 read on Species I, Figure 1.

Moreover, Applicant submits that method claims 111-115, which the Office Action contends as belonging to Group II, have been amended to mirror claims 100-110 and, therefore, claims 111-115 have a linking technical relationship with Group I, Species I (in addition to Group I, Species VI) - being essentially limited to methods for making the apparatuses recited in claims 100 and 106.

Claims 100-143 are currently pending. In view of the instant amendment claims 116-143 are withdrawn, claims 111-115 are amended and claims 100-115 are presented for examination. As mentioned above, Applicant traverses the restriction of Group I and Group II, particularly with respect to technically-linked claims 100-115, requesting that at least claims 106-115 should be examined together with claims 100-105 due to claim 100 being generically readable on Species I-V and Species VI.

#### *Discussion of Restriction Requirement*

The Manual of Patent Examining Procedure (MPEP) recites the requirements for a proper restriction requirement. In particular, the MPEP states:

There are two criteria for a proper requirement for restriction between patentably distinct inventions:

(A) The inventions must be independent (see MPEP Section 802.01, Section 806.04, Section 808.01) or distinct as claimed (see MPEP Section 806.05 – Section 806.05(i)); and

(B) There must be a serious burden on the examiner if restriction is not required (see MPEP § 803.02, Section 806.04(a) – Section 806.04(i), Section 808.01(a), and Section 808.02).

(MPEP § 803). These are two separate criteria that must be satisfied to support a proper restriction requirement. The fact that *both* criteria must be satisfied is made all the more clear by the following statement in the MPEP:

If the search and examination of an entire application can be made without serious burden, the examiner *must* examine it on the merits, even though it includes claims to independent or distinct inventions.

(MPEP § 803 (emphasis added)). Thus, if the subject matter of the pending claims is such that there would be no serious burden on the examiner to search and examine all of the

pending claims at the same time, the examiner is to do so, *even if* the pending claims are drawn to independent or distinct inventions.

In the case at hand, the Office Action has not alleged that there would be an undue burden on the Examiner if restriction were not required. The present application is classified as being in class 43, subclass 41 which currently includes only 155 issued patents. It would not be an undue burden to search the 155 issued patents in presently assigned 43/41. Even if the Examiner believed that examination of Groups I and II together warranted a further search in the somewhat related subclasses (e.g., 43.1 and 44.2), such a further search would not be unduly burdensome since the search is still limited to a single class. Furthermore, Applicant points out that in examining claims 100-115, the Examiner will already be considering many structural elements (e.g., the resiliently deformable receptacle including apertures) that are also recited in claims 116-143. Therefore, it is Applicant's position that there would be no undue burden on the Examiner to examine all claims of Groups I and II together.

In view of the foregoing, Applicant respectfully submits that the requirement for electing a single species of Groups I and II is not proper. Accordingly, Applicant requests the withdrawal of the requirement and examination of all pending claims in Groups I and II.

#### *Discussion of Amendment*

Claims 111-115 have been amended to point out more particularly and claim more distinctly the present invention. In particular, amended method claims 111-115 now mirror related apparatus claims 100-110. In view of these amendments, Applicant requests that method claims 111-115 be examined with technically related apparatus claims 100-110. No new matter has been added by way of these amendments.

#### *Conclusion*

The application is considered to be in good and proper form and the Office is respectfully requested to examine all claims of Groups I and II (i.e., claims 100-135 and 141-143) of this application. If Applicant's request for examining all claims of Groups I and II is not accepted, then Applicant requests examination of at least claims 100-115. If a telephone conference would expedite the prosecution of the subject application, the Examiner is invited to call one of the undersigned.

In re Appln. of Graham Kalazich  
Application No. 10/505,310

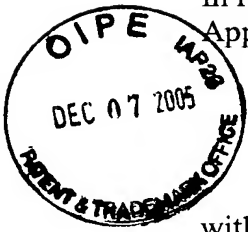
Respectfully submitted,

Handwritten signatures of Barry W. Sufrin and David R. Morris, separated by a horizontal line.

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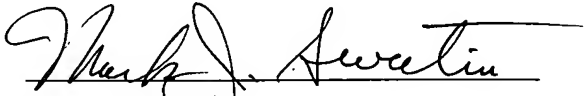
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CERTIFICATE OF MAILING

I hereby certify that this RESPONSE TO RESTRICTION REQUIREMENT (along with any documents referred to as being attached or enclosed) is being deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450.

Date: December 5, 2005

  
Mark J. Sweetin